

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

KEVIN HIGGINBOTHAM	*	
	*	CIVIL ACTION NO.:
	*	
VERSUS	*	JUDGE:
	*	
CNH INDUSTRIAL AMERICA, L.L.C,	*	
D/B/A NEW HOLLAND AGRICULTURE,	*	MAGISTRATE JUDGE:
ENTERPRISE WELDING AND	*	
FABRICATING, INC., AND	*	
WESTFIELD INSURANCE COMPANY	*	
* * * * *		

NOTICE OF REMOVAL

TO: United States District Court
Western District of Louisiana

Pursuant to 28 U.S.C. §§ 1332 and 1441, defendant, CNH INDUSTRIAL AMERICA LLC (“CNH”) hereby gives notice of its removal of this civil action from the Fifth Judicial District Court for the Parish of Richland, State of Louisiana (Civil Action No. 48387), to the United States District Court for the Western District of Louisiana.

I.

Plaintiff filed his “Petition” in the Fifth Judicial District Court for the Parish of Richland, State of Louisiana, on September 24, 2021. A copy of the plaintiff’s petition is attached to this notice as Exhibit “A.”

II.

CNH has not yet been served with plaintiff’s petition. Removal must take place within thirty days of having received “through service or otherwise, . . . a copy of the initial pleadings setting forth the claim for relief upon which” this action is based. 28 U.S.C. §1446(b)(2). This

statutory provision has been interpreted by the United States Supreme Court to mean that the removal period begins when a defendant is formally served, rather than in receipt of a complaint through informal means. *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 354-356, 119 S. Ct. 1322, 1328-1329 (1999). However, service is not a prerequisite for removal. *Delgado v. Shell Oil Co.*, 231 F.3d 165, 177 (5th Cir. 2000), *Nunez v. U.S. Xpress Leasing*, 2018 U.S. Dist. LEXIS 97069, *4 (W.D. La. 6/7/18). CNH has not been served, but its counsel received a copy of plaintiff's petition from plaintiff's counsel on October 5, 2021. While this receipt did not start the time period for removal, *supra*, this removal is proper.

III.

The action is one of a civil nature that alleges the liability of CNH to plaintiff. Plaintiff alleges that on October 23, 2020, while he was using a New Holland "Quadtrac" to try to pull a New Holland combine free from mud, he attached a chain to one of the lower frame hooks on the rear of the combine. As he was in the process of trying to pull the combine free, the lower frame hook failed causing the chain to "whip through the air, burst through the back of the Quadtrac he occupied, and strike him in the back and right side resulting in life-threatening, debilitating injuries." Plaintiff alleges that CNH manufactured the combine at issue, and he further alleges that the combine was "unreasonably dangerous" in a way that proximately caused his accident and alleged injuries. *See* Exhibit "A."

IV.

The matter in dispute reasonably appears to seek damages in excess of seventy-five thousand dollars, exclusive of interest and costs. Plaintiff alleges that as a result of the alleged accident, he has incurred medical expenses in excess of \$300,000.00. He also alleges "severe and debilitating injuries, including injuries to his right lung, multiple rib fractures, pulmonary

contusions, scapula fractures and other injuries,” and that he “was required to undergo and continues to undergo extensive surgical procedures and excruciatingly painful medical treatment for his injuries.” *See* Exhibit “A.”

V.

Plaintiff is a Louisiana citizen.

VI.

The petition names as defendants CNH; Enterprise Welding and Fabricating, Inc.; and Westfield Insurance Company.

CNH is a privately held Delaware limited liability company with its principal place of business in Racine, Wisconsin; its sole member is Case New Holland Industrial Inc. Case New Holland Industrial, Inc. is a Delaware corporation with its principal place of business in Racine, Wisconsin.

Enterprise Welding and Fabricating, Inc. is an Ohio corporation with its principal place of business in Mentor, Ohio.

Westfield Insurance Company is an Ohio insurance company with its principal place of business in Westfield Center, Ohio.

VII.

Complete diversity of citizenship therefore exists between the plaintiff and all named defendants.

VIII.

As of the date of the filing of this Notice of Removal, none of the defendants had been served. Nonetheless, as indicated by the notice attached as Exhibit “B,” both Enterprise Welding

and Fabricating, Inc. and Westfield Insurance Company consent to CNH's removal of this case to federal court.

IX.

This matter is removable pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1441.

WHEREFORE, CNH Industrial America LLC gives notice of removal of the above captioned case from state court to this Court.

/s/ Deirdre C. McGlinchey

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LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served on:

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WESTFIELD INSURANCE COMPANY

by the manner indicated above and by “e-mail” and by depositing a copy of same, postage prepaid
and duly addressed, in the U.S. Mail, this October 7, 2021.

/s/ Deirdre C. McGlinchey
DEIRDRE C. MCGLINCHEY